

EXHIBIT KK

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

CARYN DEVINS STRICKLAND,)
Plaintiff,)
)
-vs-) Case No. 1:20-cv-00066
)
UNITED STATES, et al.,)
Defendants.)

*** CONFIDENTIAL ***

SUBJECT TO PROTECTIVE ORDER

ECF NO. 183

DEPOSITION OF THE HONORABLE ROGER L. GREGORY

10:02 a.m. to 10:54 a.m.

May 16, 2023

Richmond, Virginia

Job No. 49825

REPORTED BY: Julia A. Bammel, RPR, CSR

1 Deposition of THE HONORABLE ROGER L. GREGORY,
2 taken and transcribed on behalf of the Plaintiff, by and
3 before Julia A. Bammel, RPR, CSR, Notary Public in and for
4 the Commonwealth of Virginia at large, pursuant to the
5 Federal Rules of Civil Procedure and by Notice to Take
6 Deposition, commencing at 10:02 a.m., May 16, 2023, at
7 919 East Main Street, Richmond, Virginia.

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25 Also Present: Caryn Strickland

1 T A B L E O F C O N T E N T S

2

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4 WITNESS: THE HONORABLE ROGER L. GREGORY

5 Examination by Mr. Strickland..... 6

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10 M A R K E D E X H I B I T S

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12 Plaintiff's Exhibit 72

13 E-mail with attached September 10, 2018, Request
for Disqualification

14 US00000466 - US00000467..... 9

15 Plaintiff's Exhibit 73

16 E-mail with attached February 24, 2019, Renewed
Request for Disqualification

17 US00001498 - US00001502..... 10

18 Plaintiff's Exhibit 74

19 E-mail thread

20 US00000852 - US00000855..... 16

21 Plaintiff's Exhibit 75

22 Page 55 of Defendants' privilege log..... 17

23 Plaintiff's Exhibit 76

24 E-mail with attached request for counseling and
report of wrongful conduct

25 US00000500 - US00000507..... 25

23

24

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R E F E R E N C E D E X H I B I T S

Plaintiff's Exhibit 7	
E-mail thread	
US00001382 - US00001383.....	30
Plaintiff's Exhibit 24	
E-mail thread and Counselor's Report with	
attached exhibits	
US00002293 and US00001244 - US00001311.....	28
Plaintiff's Exhibit 41	
E-mail with attached Supplement to Mediation	
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* * * * *

1 (10:02 a.m., May 16, 2023)

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3

THE HONORABLE ROGER L. GREGORY

4

was sworn and testified as follows:

5

EXAMINATION

6

BY MR. STRICKLAND:

7

Q Please state your full name and official title

8

for the record.

9

A Roger Lee Gregory, Chief Judge of the United

10

States Court of Appeals for the Fourth Circuit.

11

Q Thank you.

12

My name is Cooper Strickland, and I represent

13

the plaintiff. She's here with me, Caryn Strickland.

14

Before we start, I want to thank you for your time this

15

morning. I also want to confirm that my questions will be

16

limited to the topics outlined in the Court's order

17

permitting this deposition.

18

I'll try my best to complete this deposition as

19

quickly as possible. If at any time you need a break, or

20

for that matter, anyone else, just please let me know.

21

And so just to start with some just preliminary

22

questions, how did you prepare for this deposition?

23

A I prepared by looking at the documents that I

24

thought that were pertinent with -- to the disqualification

25

decision.

1 Q Okay. Could you just give a couple examples?

2 A A couple examples: a document dated
3 September 10th, 2018, that was a sort of grievance; and
4 then a document also stated -- dated September 10th, 2018,
5 and it was a request for disqualification; a document that
6 was dated February 22nd, 2019, that was dated -- that was
7 designated as a supplement to a request for mediation; and
8 then there was a document on February the 24th, 2019, that
9 was called renewed request for disqualification.

10 Q Okay.

11 A Yeah.

12 Q Thank you.

13 Did you speak to anybody to prepare for the
14 deposition?

15 A My counsel.

16 Q Okay. And did you look at anything else, any
17 other documents or information?

18 A Well, I quickly went over the, I think about
19 500, close to, counts in the complaint.

20 Q Okay. All right. So you looked at the
21 complaint. All right.

22 So just moving on from there, were you the
23 Chief Judge of the Fourth Circuit in 2018 and 2019?

24 A Yes.

25 Q Okay. As Chief Judge, did you have an official

1 role in the Fourth Circuit EDR proceedings?

2 A Yes.

3 Q Okay. Were you aware of the EDR proceeding for
4 Caryn Devins Strickland from the Federal Defender Office
5 for the Western District of North Carolina?

6 A Yes.

7 Q Did you have an official role in Plaintiff's
8 EDR proceeding?

9 A Yes. I think I would call it official, yes.

10 Q And just if you could describe what your role
11 was in the EDR proceeding.

12 A My role was to make sure that I would
13 investigate the facts, or see that the facts were done, and
14 then -- in terms of in the proceeding or what I did here?

15 Q Generally --

16 A Well, generally, that's what I would normally
17 do, and then it's left to, then, the EDR person, and then
18 the person who does the counseling, if that's necessary,
19 and then mediation, if necessary, and then a hearing, if
20 necessary. And then my role is different based on how far
21 it proceeds. Yes.

22 Q Thank you.

23 Is it fair to say that the EDR plan in this
24 case, the 2013 EDR plan, defines the Chief Judge's role for
25 EDR proceedings?

1 A I would say yes.

2 Q Thank you.

3 I want to show you what we're going to mark as
4 Exhibit 72. It's Bates Number US-466, and it is
5 Plaintiff's request to disqualify the Federal Defender
6 dated September 10th, 2018, which is a document you
7 referenced just a few minutes ago.

8 (Plaintiff's Exhibit 72 marked.)

9 BY MR. STRICKLAND:

10 Q You tell me if you're --

11 A Oh, yeah, I'm familiar with it. Yeah.

12 Q Okay. All right.

13 A Yes.

14 Q All right. And so you're familiar with this
15 e-mail?

16 A I am.

17 Q Okay. Does it appear to be an e-mail from
18 Plaintiff addressed to you?

19 A Yes.

20 Q Okay. Does it look like an accurate copy?

21 A Yes.

22 Q Do you see -- some of these are going to be a
23 little bit repetitive based off of what you said, but just
24 to confirm, do you see where there's a redaction followed
25 by ca4.uscourts.gov?

1 A Yes.

2 Q Okay. If Defendants stated in their privilege
3 log, "Contact information for Chief Judge Gregory and the
4 Circuit Executive redacted," would that seem accurate to
5 you?

6 A Yes.

7 Q Okay. To the best of your knowledge, did you
8 receive the disqualification request attached to this
9 e-mail on September 10th, 2018?

10 A Thereabouts, yes. Yeah.

11 Q All right. I'm going to show you what we're
12 going to mark as Exhibit 73, and this is US Bates Number
13 1498, and it is Plaintiff's request to disqualify the
14 Federal Defender dated February 24th, 2019.

15 (Plaintiff's Exhibit 73 marked.)

16 BY MR. STRICKLAND:

17 Q Are you familiar with this e-mail?

18 A Yes.

19 Q Does it look like an accurate copy?

20 A It does.

21 Q Is it addressed to you?

22 A Yes, it is.

23 Q Okay. Is this Plaintiff's request to
24 disqualify the Federal Defender dated February 24th, 2019?

25 A Yes.

1 Q If Defendants stated in their privilege log,
2 "Contact information for the Circuit Executive and the
3 Chief Judge of the Fourth Circuit redacted," would that
4 seem accurate to you?

5 A Yes.

6 Q To the best of your knowledge, did you receive
7 Plaintiff's request to disqualify the Federal Defender on
8 February 24th, 2019?

9 A Thereabouts, yes.

10 Q All right. Just give me one moment. All
11 right. Did you discuss Plaintiff's request for
12 disqualification dated September 10th, 2018, with anyone?

13 A Yes.

14 Q Okay. With whom did you discuss the request?

15 A James Ishida.

16 Q Was anyone else present?

17 A No.

18 Q When was that discussion?

19 A Well, I would have to say it was there about
20 the time -- which document? You mean the first one?

21 Q Yes, sir.

22 A The September document?

23 Q Yes, sir. September 10th.

24 A It was somewhere about that time,
25 September 10th.

1 Q Okay.

2 A Yes.

3 Q All right. Thank you.

4 What was the substance of that discussion?

5 A The substance? The substance was to look at
6 what was stated as the grounds for the disqualification.

7 The disqualification one you're talking about,
8 September 10th; right?

9 Q Yes, sir. Yes, Your Honor.

10 A The grounds of it.

11 Q Okay.

12 A And it was something that I would have to
13 decide.

14 Q Okay. Did you have any other discussions
15 regarding that disqualification request?

16 A With James?

17 Q Or anyone else.

18 A No one else.

19 Q Okay. Did you ask James Ishida to discuss the
20 disqualification request with anyone?

21 A No.

22 Q To your knowledge, did James Ishida discuss the
23 disqualification with anyone?

24 A Yes.

25 Q All right. Can you tell me who that was and --

1 who he had a conversation with about the disqualification
2 request?

3 A Persons at the AO.

4 Q Okay.

5 A AO meaning Administrative Offices of the United
6 States Court.

7 Q Do you know specific names of anyone he spoke
8 with?

9 A In terms of what he told me or --

10 Q Yes, sir.

11 A I'm not pronouncing this right, but "Shorn,"
12 "Shoren." S-o-h-r-n, something like that. Right.

13 Q Okay.

14 A Yeah.

15 Q I think that's Sohrn?

16 A Sohrn, yes.

17 Q Okay. Would those discussions that he had been
18 around that September 2018 time period?

19 A Probably then and also later as well in terms
20 of February, around February as well, when the renewed
21 request was made.

22 Q Okay.

23 A Yeah.

24 Q All right. Are you aware of any other
25 communications regarding this disqualification request?

1 A No, other than with counsel for the AO that I
2 know that he told me. I know I had none.

3 Q Okay.

4 A In terms of what he told me, none that I know
5 of, no.

6 Q All right. To your knowledge, were any of your
7 discussions or communications in writing with James Ishida?

8 A No, they were not.

9 Q Okay. And I think I know the answer to this.
10 To your knowledge, were any of his communications with
11 others in writing?

12 A Yes. I think he did have some writing
13 communications.

14 Q Is it fair to say that you wouldn't necessarily
15 be able to recall what those specific --

16 A They were with counsel.

17 Q Okay. All right.

18 A You're talking about disqualification; right?

19 Q Yes, sir. Yes, sir. Yes, Your Honor.

20 Just -- what would you prefer I --

21 A I'm comfortable with whatever you think that's
22 appropriate.

23 Q Okay. Did you discuss Plaintiff's request for
24 disqualification dated February 24th, 2019, with anyone?

25 A Yes. James Ishida.

1 Q Did you discuss it with anyone beyond James
2 Ishida?

3 A No.

4 Q Was anyone else present?

5 A When I spoke to James?

6 Q (Nodding head.)

7 A No. We weren't even present. Most of the time
8 it was by phone.

9 Q Okay. When was that discussion?

10 A Again, it would have to be on or about that
11 time. Yeah.

12 Q All right. So around February 2019?

13 A Yes.

14 Q What was the substance of that discussion?

15 A That discussion would be in terms of looking at
16 what was different, also in terms of making a decision, and
17 that was it. It was my decision to make. But I don't
18 recall anything that was specifically said other than the
19 fact that we had to deal with this because that's part of
20 my job, to make a decision. But other than that -- of
21 course, he relayed information, but I didn't -- I made the
22 decision.

23 Q All right. Just to confirm, did you have any
24 other discussions with regard to the February 2019
25 disqualification request?

1 A Not that I recall, no.

2 Q Were any of your communications or discussions
3 with James in writing regarding the --

4 A Disqualification? No.

5 Q What was your decision regarding Plaintiff's
6 request for disqualification dated September 10th, 2018?

7 A Denied, at that time. Yes. Denied.

8 Q Are you aware of how the decision regarding
9 Plaintiff's request for disqualification was communicated
10 to the plaintiff? And that is specifically the September
11 2018 disqualification request.

12 A Well, I assume it would have to be James,
13 because that's the one I told.

14 Q Okay.

15 A He was -- he made communications, James.

16 Q All right. I'm going to show you what we're
17 going to mark as Plaintiff's Exhibit 74, and this is
18 US Bates Number 852, and it's an e-mail chain.

19 (Plaintiff's Exhibit 74 marked.)

20 THE WITNESS: Thank you.

21 Okay. All right.

22 BY MR. STRICKLAND:

23 Q Okay. Are you familiar with this e-mail?

24 A No, not really.

25 Q Okay. Do you have any reason to doubt that it

1 would be an accurate copy of an e-mail?

2 A I can't answer that because I'm not familiar
3 with it.

4 Q If Defendants stated in their privilege log,
5 "Contact information for the Circuit Executive redacted,"
6 would that seem accurate to you?

7 MR. KOLSKY: Objection. Lacks foundation.

8 MR. STRICKLAND: This is an excerpt from the
9 Defendants' privilege log. We'll mark this as Exhibit 75.

10 (Plaintiff's Exhibit 75 marked.)

11 BY MR. STRICKLAND:

12 Q And I'll just draw your attention to the
13 bottom-line row. It says US-852 --

14 A Yes.

15 Q -- on the privilege log.

16 A Uh-huh.

17 Q It's the very last line. And does that match
18 the Bates number on that Exhibit 74?

19 A Number 74. What am I matching on this?

20 Q It's the very bottom row.

21 A Bottom row.

22 Q Yes, sir.

23 A Okay.

24 Q So all the way over on the left column it has a
25 Bates number, and it says US-852.

1 A Yes. I see that, yes.

2 Q Okay. And then if you go all the way over to
3 the far right, it has a box of information, and it says --

4 A Yeah, I see that. Right here?

5 Q Yeah.

6 A Okay.

7 Q All right. So does this look like an e-mail
8 involving James Ishida?

9 MR. KOLSKY: Objection. Lacks foundation.

10 THE WITNESS: It purports to be, but I can't
11 verify, but it purports to be. It's in writing, and that's
12 what it says, but -- yeah.

13 BY MR. STRICKLAND:

14 Q All right.

15 A It's not to or from me, but ...

16 Q Do you have any reason to doubt that this would
17 be an accurate copy of an e-mail involving James Ishida?

18 MR. KOLSKY: Objection. Lacks foundation.

19 THE WITNESS: Well, any reason to doubt, I
20 don't know. I mean, it's difficult to say whether I have a
21 reason. Right now I don't know anything in terms of
22 doubting it one way or the other. I'm not saying it's not
23 accurate, but I'll just say that I see it, and it's there,
24 not to or from me, but I don't know -- I can't state as a
25 fact witness about doubts.

1 BY MR. STRICKLAND:

2 Q All right. Well, I won't belabor the point.

3 If you'll turn to the second page, which is
4 Bates Number 853. If you can just look at the first -- or
5 it's the second paragraph. It has four lines in it.

6 A Uh-huh.

7 Q If you'll read -- review that paragraph.

8 A I read it. "Notwithstanding," the one that
9 started with that? Yeah, I read it.

10 Q Yes, Your Honor.

11 Okay. And then I'm going to read the final two
12 sentences. It says, "Kim and I also spoke to Chief Judge
13 Gregory the other day where he informed me that he intends
14 to deny your request to disqualify Tony Martinez. We are
15 preparing an order to that effect."

16 Do you see that?

17 A I do.

18 Q Does that statement accurately reflect your
19 ruling on the September 2018 disqualification request?

20 A That I'm -- denied it, yes. That I denied it.
21 That's all that it reflects.

22 Q Was James Ishida authorized to communicate this
23 information on your behalf to the plaintiff?

24 A Yes.

25 Q Did you ever decide Plaintiff's renewed request

1 for disqualification dated February 24th, 2019?

2 A Yes.

3 Q Did you ever provide a decision to the
4 plaintiff with that ruling?

5 A A decision? The decision, yes, to deny it.

6 Q How was that communicated to --

7 A Through James Ishida, to him for
8 Ms. Strickland.

9 Q Were there any written orders memorializing
10 your decision regarding disqualification?

11 A No.

12 Q Why did you not issue a written order regarding
13 your decision?

14 A It wasn't necessary, nor required.

15 Q All right. What were your --

16 A In particular, the confidential was, as I
17 recall, paramount to counsel, so the less you have, the
18 better there.

19 Q Okay. So it was confidential --

20 A Confidentiality. You know, he told her that he
21 was under strict confidentiality. So was I. So that's why
22 I said, it was not required or necessary.

23 Q All right. What were your reasons for denying
24 Plaintiff's disqualification request?

25 A Huh. Well, that's a long answer, I suppose.

1 There are several. First of all, the EDR plan says clearly
2 that the employee shall -- mandatory language -- shall put
3 forth all facts in support of the disqualification. So the
4 short answer is that there were no facts submitted or
5 proffered that would warrant disqualification of Tony
6 Martinez.

7 And it was -- I had to take this as a universal
8 disqualification since it didn't say which area of it. So
9 I took it by pieces. There's the EDR, and then there's the
10 counseling, then, if necessary, a full hearing, and, if
11 necessary, an actual review by the Judicial Counsel.

12 It seemed to me that the only grounds that was
13 stated in the letter was the fact that he is a violator or
14 somebody who's -- I'm accusing of something, but that
15 almost is always the case because the appointing
16 authority -- there wouldn't be a dispute if they didn't
17 disagree with something; otherwise, they wouldn't be there.

18 So that's garden-variety, and that person --
19 that party is never neutral because they're defending,
20 obviously, the unit or the appointing authority in it, so
21 that's not enough. So I saw nothing in terms of -- of
22 course, first was the question of whether or not he handled
23 the EDR. He did not. James Ishida was handling the EDR.

24 Would he be dealing with counseling? He would
25 not be. The counseling -- "he," meaning Tony Martinez,

1 would not be. If it went to mediation, he would not be
2 handling the mediation.

3 Another question about, "Well, I don't want him
4 investigating," well, I had my own investigation
5 independent of him. He wasn't the investigator. He would
6 be a witness.

7 So all of those reasons. To disqualify the
8 appointing authority is an unusual -- or rare. Yes, I
9 understood I had the authority to disqualify him. No
10 question about that. I do. But in looking at it, you look
11 at the whole context of it.

12 And based on her letter -- I'm sorry --
13 Ms. Strickland's letter on September 10, in terms of saying
14 what her grievance was, it's clearly -- in the documents,
15 it clearly said that she and Mr. Martinez were engaged in
16 negotiating at that point. Not that she agreed with that,
17 no meeting of the minds, but they were.

18 So there was no allegation that he was
19 stonewalling, would not meet with her, would not negotiate.
20 There was nothing that he would be a mediator, nothing that
21 he would have any fact-finding or be involved in the
22 investigation or those things. Those are the kinds of
23 things you would look for if there was a situation. None
24 of them were there.

25 That's why, based on what -- as was required,

1 you shall put forth the facts, because that's what I'm
2 looking at. I'm not making a merit decision. I'm looking
3 at the facts you proffered, and the proffered facts did not
4 justify disqualification.

5 Q All right. Have you ever been presented a
6 disqualification request before in EDR?

7 A Have I? No, I have not.

8 Q Is there -- and, again, I know this can be
9 somewhat repetitive. Is there anything else you'd like to
10 add regarding the basis for your decision?

11 A Well, of course, I gave you the interrogatory
12 in this case, so to the extent I have excluded something
13 there, I would incorporate it by reference as well. But
14 it's -- at this point, I think that seems to be most of it
15 in terms of -- because the facts were so -- presented were
16 very few, and it basically all dealt with the fact that
17 he's a violator, and, therefore -- and another thing too.

18 It suggested, I think -- suggested that "I
19 don't want to be made to sit down and negotiate with him,"
20 but the rules clearly say you don't have to do any
21 face-to-face counseling. It's and/or. You don't have to
22 meet with anyone in terms of what -- face someone. It
23 could be meeting -- a counselor can meet with, and together
24 or separately.

25 So even those things -- so I saw nothing -- I

1 probably shouldn't say nothing, but I saw nothing that
2 warranted disqualification.

3 Q Okay. And just to clarify on that point, you
4 would agree that counseling and mediation were required
5 phases of EDR at that time?

6 A Were required? No. I don't think it was
7 necessarily required. No. You could -- you could be
8 finished with EDR, and you could go straight -- you know,
9 it's EDR. I mean, EDR counseling could be the end of it
10 and never get to mediation.

11 Q So you could -- if you were a complainant, you
12 could skip counseling and mediation and just go straight to
13 a final hearing?

14 A No. No. No. I'm not saying that. No.

15 Q All right. And so as far as -- just to clarify
16 what you were just talking about, you made it more in the
17 sense of like communications could occur over phone in
18 order to perform counseling or mediation. They wouldn't
19 necessarily have -- the parties wouldn't necessarily have
20 to be in the same room?

21 A They wouldn't have to be on the phone at the
22 same time either. You talk to one side, what they want,
23 and I think -- it seemed like they were -- was engaged in
24 that, by her letter, already. Not that they came to a
25 meeting of minds. That's why we had -- the actual EDR was

1 filed.

2 Q All right. What other information did you
3 consider in denying the disqualification request?

4 A I considered the -- what was submitted on
5 February the 22nd. It's labeled as the supplement for a
6 request for mediation as well, for the -- you know, for
7 that.

8 Q Any other documents?

9 A Documents? Well, there was a lot of documents.
10 It was a long -- it was like, I think, 23 pages or
11 something like that. It was a lot.

12 Q So maybe I'll go through a few of them. It's
13 ones that we have discussed already, but --

14 A Okay.

15 Q I'm going to show you what we are going to mark
16 as Plaintiff's Exhibit 76. And this is US Bates
17 Number 500, and it is Plaintiff's request for counseling
18 and report of wrongful conduct.

19 (Plaintiff's Exhibit 76 marked.)

20 THE WITNESS: Yes. Yes. The September 10th,
21 yes. Okay.

22 BY MR. STRICKLAND:

23 Q All right. Are you familiar with this --

24 A Oh, yes.

25 Q -- e-mail and document?

1 A Yes.

2 Q Does this document appear to be a request for
3 counseling and report of wrongful conduct filed by
4 Plaintiff?

5 A Yes.

6 Q All right. Is it dated September 10th, 2018?

7 A Yes.

8 Q Does it look like an accurate copy?

9 A Yes.

10 Q Is that James Ishida's name on the e-mail?

11 A Yes.

12 Q Okay. Do you see where there's a redaction
13 followed by ca4.uscourts.gov?

14 A Yes.

15 Q If Defendants stated in their privilege log,
16 "Contact information for the Circuit Executive redacted,"
17 would that seem accurate to you?

18 A Yes.

19 Q Does this e-mail reflect that Mr. Ishida
20 received Plaintiff's request for counseling and report of
21 wrongful conduct on September 10th, 2018?

22 A Yes.

23 Q This actually may -- let me get -- give me one
24 second.

25 I'll just -- I'll point out for you that on the

1 very first page, US Bates Number 500, there's a date that
2 says September 12th, 2019.

3 A Uh-huh.

4 Q My understanding, there was an e-mail merge.

5 A There was.

6 Q Okay. And --

7 MR. KOLSKY: And I'm sorry. I think you said
8 September 12, 2019.

9 MS. STRICKLAND: June.

10 MR. STRICKLAND: I'm sorry. June 12, 2019.

11 Thank you.

12 BY MR. STRICKLAND:

13 Q But if you look on the next page, US-501, you
14 can see at the top there's a date, September 10, 2018; is
15 that correct?

16 A That's correct.

17 Q Okay. Was James Ishida the EDR Coordinator for
18 this EDR proceeding?

19 A Yes.

20 Q Did Mr. Ishida provide you the request for
21 counseling and report of wrongful conduct attached to this
22 e-mail?

23 A Yes.

24 Q Okay.

25 A So we discussed it. Yes.

1 Q When did you receive the request for counseling
2 and report of wrongful conduct?

3 A I can't say exactly when I received it the
4 first time, no, but it should have been on or about the
5 time in September, so ...

6 Q All right. Did you consider Plaintiff's
7 September 10, 2018, request for counseling and report of
8 wrongful conduct in making your decision on her
9 disqualification request?

10 A Yes, I did, because it's -- it took a while.
11 Also, I don't think we mentioned another document in terms
12 of, also, I looked at the report from the -- but that was
13 later on -- but the report from the factual findings. But,
14 yes, I did consider this. Yes.

15 Q Thank you.

16 All right. I'm going to show you what has been
17 previously marked as Exhibit 24 from the deposition of
18 Heather Beam that was previously taken in this case. It's
19 Bates Number US-2293, and then the next page starts at
20 1244, and this is Heather Beam's investigation report dated
21 January 11th of 2019. It's also referred to as the
22 Counselor's Report.

23 (A copy of Plaintiff's Exhibit 24 was presented
24 to the witness for reference.)

25 THE WITNESS: Uh-huh. I'm sorry. Go ahead.

1 BY MR. STRICKLAND:

2 Q Are you familiar with this e-mail?

3 A Yes.

4 Q Okay. Does it appear to be an e-mail from
5 Heather Beam with her investigation report or Counselor's
6 Report?

7 A Yes.

8 Q Okay. Does it look like an accurate copy?

9 A It does, yes.

10 Q Is that your name and e-mail address in the
11 cc line?

12 A Yes.

13 Q Okay. Does this e-mail accurately reflect that
14 you received Heather Beam's investigation report on
15 January 11th, 2019?

16 A Yes. I would say thereabout, yeah.

17 Q Did you consider the findings of Heather Beam's
18 January 11th, 2019, investigation report in making your
19 decision on her disqualification request, Plaintiff's
20 disqualification request?

21 A Yes. That was a factor because it was ongoing.
22 Absolutely. Yes.

23 Q Thank you.

24 I'm going to show you what has been previously
25 marked as Plaintiff's Exhibit 7 from the deposition of

1 James Ishida that was previously taken in this case.

2 A Uh-huh.

3 Q It's US Bates Number 1382, and it's Heather
4 Beam's January 13th, 2019, e-mail recommending
5 disqualification.

6 (A copy of Plaintiff's Exhibit 7 was presented
7 to the witness for reference.)

8 THE WITNESS: Okay.

9 BY MR. STRICKLAND:

10 Q Are you familiar with this e-mail?

11 A I can't say that I am.

12 Q Having read the e-mail now, was the substance
13 of it ever communicated to you?

14 A I don't recall that. I can't flat-out deny it,
15 but I ...

16 Q I just want to walk through certain components
17 of this e-mail. On the very first page, the 1382 --

18 A Uh-huh.

19 Q -- on the very bottom of the page, I'm going to
20 read what's -- it's James e-mailing Heather on January 13,
21 2019.

22 A Uh-huh.

23 Q It says, "I'd like your thoughts on whether you
24 think Tony should be disqualified from participating in the
25 EDR case."

1 Do you see that?

2 A Yes, I see that.

3 Q And then I would like to go up to the next
4 block, which is January 13, 2019, 5:53 p.m. It's from
5 Heather Beam back to James, and it says -- I'm just going
6 to read it into the record and see if you can confirm that
7 this is what it says.

8 "Hey, James. I truly believe Tony is biased in
9 this case involving JP and Caryn as far as the sexual
10 harassment is concerned. From my conversations with him, I
11 know he feels Caryn is attempting to exploit this situation
12 to get the transfer to Asheville. However, it has created
13 a bias in him to look at this case from a neutral
14 perspective. I also believe he lacks the experience and
15 understanding of exactly how this process works. I am
16 concerned he could cause more damage if he were involved in
17 the process at this point.

18 "Caryn had requested Tony be disqualified as
19 she felt she was retaliated against after she submitted her
20 claim of wrongful conduct. Although retaliation in my
21 investigation was unfounded, I still think in a good faith
22 effort to resolve this, the Circuit should consider
23 disqualifying him based on the contentious nature of the
24 current situation."

25 Do you see that in the e-mail?

1 A Oh, yeah. Yeah. That's what it says.

2 Q All right. And then I'll --

3 A It's dated January the 13th. Yeah.

4 Q And going to the top block now in this chain,
5 it's from James Ishida to Heather Beam, January 13, 2019,
6 6:55 p.m., and I'm just going to read from it.

7 It says, "Well said. Kim and I have a meeting
8 tomorrow with Chief Judge Gregory at 2 p.m."

9 A Uh-huh. Yes. That's what it says.

10 Q All right. So to confirm, you never received
11 this e-mail? It was never forwarded to you?

12 A I said I don't recall it, but I do know this,
13 that this was -- is dated two days after -- no. Scratch
14 that. No. I don't recall it. I don't recall it.

15 Q And just to confirm, no one ever communicated
16 the substance of this e-mail to you?

17 MR. KOLSKY: Objection. Asked and answered.

18 THE WITNESS: No, that I know of. Not that I
19 know of.

20 BY MR. STRICKLAND:

21 Q And just to confirm, did you consider Heather
22 Beam's January 13, 2019, e-mail recommending that the
23 Defender be disqualified in making your decision on
24 Plaintiff's disqualification request?

25 A Did I consider it, her opinion?

1 Q Heather Beam's opinion.

2 A No, I did not, because it wasn't her job to
3 make the decision, nor was I counseling her -- or sought
4 counsel from her to help in that decision, so, no, I
5 didn't.

6 Q So you did not -- you did not direct James
7 Ishida to request Heather's opinion?

8 A No, I did not.

9 Q Do you have any reason to know why James would
10 have asked for her opinion?

11 A I don't know. You have to ask him that.

12 Q Okay. I'm going to show you what has
13 previously been marked as Plaintiff's Exhibit 41 from the
14 deposition of Ed Smith that was previously taken in this
15 case. It is US Bates Number 3247, and it is Plaintiff's
16 Supplement to Mediation Request dated February 22nd, 2019.

17 (A copy of Plaintiff's Exhibit 41 was presented
18 to the witness for reference.)

19 THE WITNESS: Yeah. I got it. Yeah. Go
20 ahead.

21 BY MR. STRICKLAND:

22 Q Are you familiar with this e-mail and document?

23 A Yes, I am.

24 Q Does this appear to be an e-mail with
25 Plaintiff's supplement to her request for mediation?

1 A Yes, it does.

2 Q Does it look like an accurate copy?

3 A It does.

4 Q Is that your name in the cc line on the e-mail?

5 A Yes.

6 Q If Defendants stated in their privilege log,

7 "Contact information for the Circuit Executive and the

8 Chief Judge of the Fourth Circuit redacted," would that

9 seem accurate to you?

10 A Yes.

11 Q Does this e-mail accurately reflect that you
12 received Plaintiff's supplement to her mediation request on
13 September 24th, 2019?

14 A Yes. Thereabouts, yes.

15 Q Thank you.

16 Did you consider Plaintiff's February 22nd,
17 2019, supplement to her mediation request in making your
18 decision on her -- on Plaintiff's disqualification request?

19 A Yes. That was definitely a part of it.

20 Q To the best of your knowledge, have you
21 provided all of the reasons for your disqualification
22 request?

23 MR. KOLSKY: Object to form.

24 MR. STRICKLAND: I'll restate it.

25 BY MR. STRICKLAND:

1 Q To the best of your knowledge, have you
2 provided all of the reasons for your disqualification
3 decision?

4 A That's difficult to say. I suppose -- well,
5 no. I would say no, because as being a judge, you have to
6 have context as well as text. So in making the decision to
7 disqualify, I looked at a broader issue; that is, first, we
8 start with what is the purpose of an EDR, and it's called
9 dispute resolution. It's to resolve matters. That's the
10 whole point of it.

11 And so I looked at the whole context of
12 resolving it with the person -- or with the appointing
13 authority that needs to resolve it as best Ms. Strickland
14 and the appointing authority can agree to. So then you
15 have to have the right people there who can effect a
16 settlement.

17 And that is -- for example, all these things
18 were grievance-type things, like pay, job duties, who
19 you'll report to, where you would work, all of those things
20 like that. That's the very essence of the idea of what a
21 dispute is, and Mr. Martinez is the fulcrum there.

22 I think the things that -- the "bad acts"
23 aspect of it was the alleged sexual harassment. Well, he
24 was not that person. The other part is, of course, in
25 terms of how -- questions of how he reacted, what he did,

1 what my job things were, so all of that.

2 So I can't say that universally, sitting down
3 with you right now, all of the things I considered. It's
4 not just a check the box. That's why it was an ongoing
5 thing. I said "at this time" in those things, but nothing
6 came to me in terms of -- you know, there are many people,
7 I'm sure, who have opinions about things and views, but in
8 terms of facts -- and that's what it said, shall, shall put
9 forth the facts in it.

10 And so I looked at the broader reach of it and
11 went beyond her facts in terms of looking in terms of every
12 sector where it would be appropriate to disqualify, take
13 the appointing authority out. And you're trying to -- if
14 you're trying to legitimately resolve it, you need that
15 person, and I saw nothing in there that said that he was
16 resisting that. By her own statement, they were
17 negotiating it.

18 Q And just to clarify, when you say the
19 appointing authority, is another way to describe that the
20 Unit Executive?

21 A Exactly. That's what -- yeah. The government
22 appointing authority, yes.

23 Q And so just to confirm, from what you just
24 described, it sounds like you believe that Mr. Martinez was
25 just a necessary component of the EDR process at that time?

1 A No. Not to the point where he could not be
2 disqualified. He could be necessary, but there could be
3 facts that suggest that he should be disqualified. That
4 was not dispositive just because he's necessary. His being
5 necessary begins the inquiry as to are you going to take
6 the step to pull him out. But in some circumstances, he or
7 anybody else may be pulled out because they've shown
8 themselves, because of the facts, that they cannot do their
9 job.

10 I mean, I don't think anybody likes to be in a
11 dispute resolution, you know, but the point is, that comes
12 with the territory. I saw nothing in the facts that
13 suggested he had abdicated that or totally resisted it.
14 Did they agree on it? No. That's why they had a dispute.

15 So if I just wanted to tell you in terms of the
16 full thing, then we'd be here a long time. We could get
17 into, I guess, legal philosophy and all those kinds of
18 things like that, because all that -- you know, an
19 appellate judge looks at a lot of things. They have more
20 time to cogitate than our hardworking District Court
21 judges.

22 But the bottom line is, as a judge in making a
23 judicial decision, I looked at all those factors, and I
24 believe the decision I made was correct; not perfect,
25 necessarily, but I think it's correct. And I think the

1 problem with the standard is abuse of discretion since it
2 doesn't lay out a standard at all. So the EDR doesn't even
3 talk about what the standards are, what the guidelines are,
4 so ...

5 MR. STRICKLAND: Well, at this point, can we
6 take a break and just confer? Because that may be the
7 extent of what we need to ask.

8 MR. KOLSKY: Sure. That's fine with me.

9 MR. STRICKLAND: We may come back with just a
10 few more questions --

11 THE WITNESS: Sure. Sure. Okay.

12 MR. STRICKLAND: -- but we're close. And,
13 again, we're trying to be as respectful of your time as
14 possible.

15 THE WITNESS: And I appreciate that. I really
16 do. No. But take your time, and --

17 MR. STRICKLAND: Okay. So we'll --

18 THE WITNESS: -- we'll be here. We'll stay
19 right here.

20 MR. STRICKLAND: You all have more people, so
21 we'll step out in the hallway --

22 THE WITNESS: Thank you.

23 MR. STRICKLAND: -- and we'll come back.

24 (Break in proceedings.)

25 MR. STRICKLAND: That does conclude the

1 questions that we'd like to ask, so we pass the witness.

2 MR. KOLSKY: I have no questions, but I did
3 want to note on the record that the witness will read and
4 sign the transcript.

5 (Deposition concluded at 10:54 a.m.)

6 (Signature reserved.)

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1 COMMONWEALTH OF VIRGINIA AT LARGE, to wit:

2 I, Julia A. Bammel, RPR, CSR, Notary Public in
3 and for the Commonwealth of Virginia at large, and whose
4 commission expires May 31, 2024, do certify that the
5 aforementioned appeared before me, was sworn by me, and was
6 thereupon examined by counsel, and that the foregoing is a
7 true, correct, and full transcript of the testimony
8 adduced.

9 I further certify that I am neither related to
10 nor associated with any counsel or party to this proceeding
11 nor otherwise interested in the event thereof.

12 I further certify that the deponent's right to
13 review the transcript was reserved.

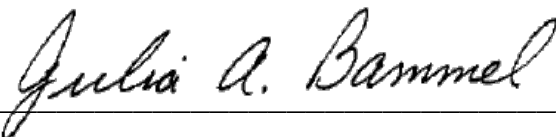
14 Given under my hand and notarial seal at
15 Charlottesville, Virginia, this 18th day of May, 2023.

16

17

18

19



20

Julia A. Bammel, RPR, CSR

21

Notary Public Registration No. 7205414

22

Commonwealth of Virginia at Large

23

24 Job No. 49825

25